

OFFICE OF THE ATTORNEY GENERAL

85-00108



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DEC 3 1984

Hon. H. Dean Buttram, Jr.
Attorney for
Cherokee County Commission
P. O. Drawer B
Centre, AL 35960

Counties - District Judges -
Compensation - Expense
Allowance

Local Act No. 1034, 1973
Legislative Session and Local
Act No. 1024, 1975 Legislative
Session have not been repealed
or superseded by any other act.

Under the Judicial Article the
county is to continue paying
previously enacted expense
allowances to district judges.

It is mandatory for Cherokee
County Commission to pay
District Court Judge Coggin the
expense allowance provided by
Act No. 2034, 1973 Legislative
Session and Act No. 1024, 1975
Legislative Session.

Dear Mr. Buttram:

Our office received an opinion request from you
concerning the following matter:

The District Judge of Cherokee County, Alabama, Honorable John D. Coggin, came before the Cherokee County Commission at its regular meeting on Monday, October 22, 1984, and requested that the Cherokee County Commission commence November 1, 1984, paying him an expense allowance in addition to his other compensation, salary or allowances. The Judge's request is supported by Act No. 1034, Volume III, Acts of Alabama, 1973 and Act No. 1024, Acts of Alabama, 1975, providing for payment of a \$200.00 per month and \$300.00 per month expense allowance respectively, to the Judge of the County Court of Cherokee County, Alabama.

The issues involved are four-fold.

First, have these two local bills been repealed or superseded by other statutes or the Judicial Article Implementation Act? Second, does the fact that former County and District Judge William H. Lumpkin drew an expense allowance under these statutes as County Judge until 1977, but thereafter, voluntarily requested as District Judge that he not be paid such expense allowance, have any effect on the availability of the expense allowance to present District Judge Coggin? Third, in light of the Judicial Article Implementation Act, is such expense allowance payable under said legislative acts? Fourth, does the Cherokee County Commission have any discretion as to the payment of such "expense allowance" or the amount of it?

In answer to your first question, Act No. 1034, 1973 Legislative Session and Act No. 1024, 1975 Legislative Session have not been repealed or superseded by any other act.

In answer to your second question, the fact that former County and District Judge William H. Lumpkin drew an expense allowance under these statutes as County Judge until 1977, but thereafter, voluntarily requested as District Judge that he not be paid such expense allowance, has no effect on the availability of the expense allowance to present District Judge Coggin.

In answer to your third question, this office has held on several occasions that under the Judicial Article the


county is to continue paying previously enacted expense allowances to district judges. See opinion to Honorable W. T. Lockard, Chairman, Sumter County Commission, under date May 16, 1977; opinion to Honorable Lee M. Otts, Escambia County Attorney, under date July 11, 1977; opinion to Honorable Eldon Sharpe, Probate Judge and Chairman of Tallapoosa County Commission, under date November 2, 1979.

In answer to your fourth question, it is mandatory for the Cherokee County Commission to pay District Judge Coggin the expense allowance provided by Act No. 1034, 1973 Legislative Session and Act No. 1024, 1975 Legislative Session. See enclosed opinion to Honorable Eldon Sharpe, supra.

I do hope I have adequately answered your inquiry. If, however, I may be of further assistance to you in any matter, please do not hesitate to contact me.

Sincerely,

CHARLES A. GRADDICK
Attorney General
By:


SUSAN MCKINNEY
Assistant Attorney General

CAG/sm/s

OFFICE OF THE ATTORNEY GENERAL

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CHARLES A. GRADDICK
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STATE OF ALABAMA

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Honorable Eldon Sharpe
Probate Judge and Chairman
Tallapoosa County Commission
Dadeville, Alabama 36853

Tallapoosa County - District
Judges - Expenses

It is mandatory for Tallapoosa
County to pay its district
judge the expense allowance
provided by Act No. 571, 1969
Legislative Session.

Dear Judge Sharpe:

Acknowledgement is made of your request for a clarification
of a prior opinion of the Attorney General.

In an opinion of this office to you dated September 12, 1979
it was stated that the district judge of Tallapoosa County is to
receive an expense allowance under Act No. 571 of the 1969 Legis-
lative Session. Regarding this conclusion, you asked the follow-
ing questions:

"On page two (2) of the letter when
Section 12-17-68 of the Code of
Alabama 1975 was quoted, this Code
uses the term 'any county may.' Also,
on page three (3) of attached letter
when it states, 'Therefore, the
District Judge of Tallapoosa County
may receive expense allowance provided
by Act No. 571 of the 1969 Legislative
Session.'

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Probate Judge and Chairman
Tallapoosa County Commission
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"In view of the above terms of 'may receive' and 'any county may,'

1. Is is mandatory for the Tallapoosa County Commission to pay the District Judge \$2,400.00 per year expense allowance, or
2. Does the Tallapoosa County Commission have a choice of paying or not paying the \$2,400.00 per year expense allowance."

The question of whether it was mandatory for a county to pay its district judge an expense allowance under Code of Alabama 1975, Section 12-17-68 was considered in an opinion to the Honorable Joe Gilliland, District Judge of Franklin County, dated May 20, 1978. In that opinion it was concluded that a county must pay its district judge the expense allowance provided by a local act. Quoting from that opinion:

"The same question was considered by this office in an opinion to the Honorable C. S. Tidwell dated July 22, 1977. There was a local act of the Legislature which gave an expense allowance to the judge of Marion County Superior Court. This court was also abolished by Act No. 1205 of the 1975 Legislative Session. The Attorney General concluded that under Section 4-114 of the Act 1205, supra, the expense allowance should be continued for the district judge of that county and it was not within the county's discretion to pay this allowance.

Honorable Eldon Sharpe
Probate Judge and Chairman
Tallapoosa County Commission
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"It is my opinion that because there is an Act already enacted granting the expense allowance, any discretion of the county to pay the allowance is removed. The discretion of a county to pay an expense allowance to its district judge would lie in whether to have a local act enacted granting an expense allowance to the judge."

The words "may receive" in the statement on page 3 of the September 13, 1979 opinion of the Attorney General were inadvertently used. The conclusion would more correctly read, "Therefore, the district judge of Tallapoosa County must receive the expense allowance provided by Act No. 571 of the 1969 Legislative Session."

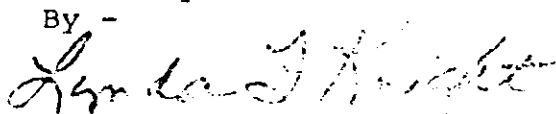
I hope that this sufficiently answers your question.

If our office can be of further assistance, please do not hesitate to call on us.

Sincerely,

CHARLES A. GRADDICK
Attorney General

By -



LYNDA F. KNIGHT
Assistant Attorney General

LFK;mj